



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R05-OAR-2008-0784; FRL-9965-01-R5]**

**Air Plan Approval; Wisconsin; Definition of Chemical Process Plants Under State PSD Regulations and Operating Permit Program**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plan (SIP) for Wisconsin and revisions to the title V Operating Permit Program for Wisconsin. The proposed revisions incorporate changes to the definition of "chemical process plants" under Wisconsin's Prevention of Significant Deterioration (PSD) and title V Operating Permit Programs. The changes to the state rules described below are approvable because they are consistent with EPA regulations governing state PSD and title V programs and will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the Clean Air Act (CAA)), or any other applicable requirement of the CAA.

**DATES:** Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R05-OAR-2008-0784 at <https://www.regulations.gov>, or via email to [damico.genevieve@epa.gov](mailto:damico.genevieve@epa.gov). For comments submitted at

Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Rachel Rineheart, Environmental Engineer, Air Permit Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7017, [rineheart.rachel@epa.gov](mailto:rineheart.rachel@epa.gov). The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

## **I. What is being addressed in this document?**

EPA is proposing to approve revisions to the Wisconsin SIP received on September 30, 2008. EPA is also proposing to approve revisions to the Wisconsin title V Operating Permit Program. These revisions address changes made to EPA regulations that are reflected in EPA’s final rule entitled “Prevention of Significant Deterioration, Nonattainment New Source Review (NA NSR), and Title V: Treatment of Certain Ethanol Production Facilities Under the ‘Major Emitting Facility’ Definition” (hereinafter referred to as the “2007 Ethanol Rule”) as published in the *Federal Register* on May 1, 2007 (72 FR 24059). The 2007 Ethanol Rule amended the PSD definition of “major stationary source” in the Federal PSD regulations (40 CFR 51.166 paragraphs (b) (1) (i) (a), (b) (1) (iii) (t) and (i) (1) (ii) (t)) to exclude certain ethanol facilities from the “chemical process plant” source category. In doing so, it established the PSD major source threshold for ethanol production facilities at 250 tons per year (tpy) rather than 100 tpy. The 2007 Ethanol Rule also removes the requirement to include fugitive emissions when determining if an ethanol production facility is major for PSD and title V permitting.

On October 21, 2019, EPA responded to a petition for reconsideration of the 2007 Ethanol Rule, denying the petition

with respect to the revisions of the PSD regulations reflected in that rule (as described in more detail below). EPA is now proposing to approve revisions to Wisconsin's SIP and operating permit program that are based on a part of the 2007 Ethanol Rule.

## **II. Background.**

### *A. PSD Permitting Thresholds for Chemical Process Plants Prior to the 2007 Ethanol Rule*

Under the CAA, there are two potential thresholds for determining whether a source is a major emitting facility that is potentially subject to the construction permitting requirements under the PSD program. One threshold is 100 tpy per pollutant, and the other is 250 tpy per pollutant. Section 169(1) of the CAA lists 28 source categories that qualify as major emitting facilities if their emissions exceed the 100 tpy threshold. If the source does not fall within one of the 28 source categories listed in section 169, then the 250 tpy threshold is applicable.

One of the source categories in the list of 28 source categories to which the 100 tpy threshold applies is chemical process plants. Since the Standard Industrial Classification code for chemical process plants includes facilities primarily engaged in manufacturing ethanol fuel, the EPA and states had previously considered such facilities to be subject to the 100 tpy threshold.

As a result of this classification, pursuant to the EPA

regulations adopted under section 302(j) of the CAA, which address the treatment of fugitive emissions in applicability of PSD, chemical process plants were also required to include fugitive emissions for determining the potential emissions of such sources. See, e.g., 40 CFR 51.165(a)(1)(iv)(C). Thus, prior to promulgation of the 2007 Ethanol Rule, the classification of fuel and industrial ethanol facilities as chemical process plants had the effect of requiring these plants to include fugitive emissions of criteria pollutants when determining whether their emissions exceed the applicability thresholds for the PSD and NA NSR permit programs.

*B. Title V Permitting Thresholds for Chemical Process Plants  
Prior to the 2007 Ethanol Rule*

The CAA also established requirements for determining applicability for the title V operating permit program. All title V major sources must obtain a title V permit. Section 501(2) of the CAA defines "major source" for the purpose of the title V program as either a "major source" as defined by section 112 of the CAA or a "major stationary source" as defined in section 302 or part D of title I of the CAA. Under the general definition of "major stationary source" in section 302(j) of the CAA, the major source threshold for any air pollutant is 100 tons per year. Under the NA NSR requirements of Part D of title I of the CAA, the applicability of the lower thresholds for major sources is dependent upon the pollutant and the severity of the nonattainment classification. Major source thresholds

for hazardous air pollutants (HAP) under section 112 of the CAA are 10 tpy for a single HAP and 25 tpy for any combination of HAPs. A source with emissions that exceed either of these thresholds is required to obtain a title V operating permit.

Section 502 of the CAA and EPA regulations provide that sources that belong to one of 28 source categories listed in 40 CFR 70.2 must include fugitive emissions in determining applicability. The list of 28 source categories may also be included in approved state operating permit regulations.

### *C. Ethanol Rule*

On May 1, 2007, EPA published the 2007 Ethanol Rule in the *Federal Register* (72 FR 24060). This final rule amended the PSD and NA NSR regulations to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes from the "chemical process plant" category under the regulatory definition of "major stationary source."

This change to the PSD regulations affected the threshold used to determine PSD applicability for these ethanol production facilities, clarifying that such facilities were subject to the 250 tpy major source threshold. The 2007 Ethanol Rule also changed how fugitive emissions are considered for affected ethanol production facilities. Because they would no longer be considered as part of the "chemical process plants" category, ethanol facilities would no longer be required to include fugitive emissions when determining major source status under PSD, NA NSR, and title V.

#### *D. Petitions for Review and Reconsideration of the 2007 Ethanol Rule*

On July 2, 2007, the National Resources Defense Council (NRDC) petitioned the U.S. Court of Appeals for the D.C. Circuit (D.C. Circuit) to review the 2007 Ethanol Rule. On that same day, EPA received a petition for administrative reconsideration and request for stay of the 2007 Ethanol Rule from NRDC. On March 27, 2008, EPA denied NRDC's 2007 administrative petition for reconsideration.

On March 2, 2009, EPA received a second petition for reconsideration and a request for stay from NRDC. In 2009, NRDC also filed a petition for judicial review challenging EPA's March 27, 2008, denial of NRDC's 2007 administrative petition in the D.C. Circuit. This challenge was consolidated with NRDC's challenge to the 2007 Ethanol Rule. In August of 2009, the D.C. Circuit granted a joint motion to hold the case in abeyance, and the case has remained in abeyance.

On October 21, 2019, EPA partially granted and partially denied NRDC's 2009 administrative petition for reconsideration. Specifically, EPA granted the request for reconsideration with regard to NRDC's claim that the 2007 Ethanol Rule did not appropriately address the CAA section 193 antibacksliding requirements for nonattainment areas.

#### **III. What revisions to the Wisconsin rules is EPA proposing to approve?**

On September 30, 2008, EPA received a request from the

Wisconsin Department of Natural Resources to revise the Wisconsin SIP. This submittal included changes to the definition of "major stationary source" under Wisconsin Administrative Code chapters NR 405, NR 407, and NR 408, which incorporate into the Wisconsin regulations the changes EPA made to Federal PSD and title V regulations in the 2007 Ethanol Rule. In addition to the changes related to the 2007 Ethanol Rule, this submittal contained revisions to NR 405 and 408 with respect to the definition of "replacement unit" and how calculations are to be performed under a Plantwide Applicability Limit (PAL). EPA approved the changes to replacement unit and PAL calculations in a separate action on May 6, 2021 (86 FR 24499).

In this action EPA is proposing to approve the PSD and title V changes in NR 405 and 407 relating to the 2007 Ethanol Rule. EPA is taking no action at this time with respect to the NA NSR changes in NR 408 related to the 2007 Ethanol Rule.

The regulations that EPA is proposing to approve adopt language that is the same as or consistent with the language of EPA's 2007 Ethanol Rule. The state regulations that EPA is proposing to approve exclude production facilities that produce ethanol by natural fermentation from the "chemical process plants" category. These revisions clarify that an ethanol facility is subject to the PSD major source threshold of 250 tons per year and that such sources need not include fugitive emissions when determining major source applicability under PSD



and title V.

EPA has determined that the proposed revisions will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA as required by section 110(1) of the CAA. Our determination is based on an analysis of Wisconsin's ethanol production trends, existing ethanol production permit requirements and locations with respect to ambient air monitoring, Wisconsin's statewide emissions inventory, Wisconsin's air quality design value trends, and representative photochemical modeling results for ozone and secondary fine particulate (PM<sub>2.5</sub>) formation. Our analysis is included in the docket for this rulemaking.

Our analysis shows that Wisconsin's existing ethanol production facilities contribute 3.2% or less of each criteria pollutant when compared to statewide facility emissions. Wisconsin's total ethanol production has increased since 2007 but the state's air quality has steadily improved in general. Photochemical modeling of hypothetical sources representative of ethanol production facilities shows that ozone formation as a result of oxides of nitrogen (NO<sub>x</sub>) and volatile organic compounds emissions and secondary PM<sub>2.5</sub> formation as a result of NO<sub>x</sub> and sulfur dioxide emissions will not themselves cause or contribute to a violation of the ozone or PM<sub>2.5</sub> National Ambient Air Quality Standard. In addition, the applicability of Federal and state requirements to ethanol production facilities in Wisconsin, such

as New Source Performance Standards at 40 CFR part 60 and National Emission Standards for Hazardous Air pollutants at 40 CFR parts 61 and 63, will remain unaffected by this action.

#### **IV. What Action is EPA Taking?**

EPA is proposing to approve revisions to the Wisconsin SIP in 40 CFR 52.2570. EPA is also proposing to approve revisions to the Wisconsin title V Operating Permit Program in 40 CFR part 70 appendix A. The revisions that EPA is proposing to approve change the definition of "major stationary source." EPA is not taking action on similar changes related to NA NSR in this action. This action would approve changes to the state regulations that establish that the PSD applicability threshold for certain ethanol plants is 250 tpy and remove the requirement to include fugitive emissions when determining if an ethanol plant is subject to major source requirements under PSD and the title V Operating Permit Program. EPA has determined that these revisions are consistent with EPA's PSD and title V regulations and that approval of these revisions is consistent with the requirements of CAA section 110(l) and will not adversely impact air quality.

#### **V. Incorporation by Reference.**

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference revisions to Wisconsin Administrative Code rules NR 405.02(22)(a)1. and NR

405.07(4)(a)20., as published in the Wisconsin Register #631 on July 31, 2008, effective August 1, 2008, discussed in section IV of this preamble. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov* and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **VI. Statutory and Executive Order Reviews.**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal

implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 22, 2022.

Debra Shore,  
*Regional Administrator, Region 5.*

[FR Doc. 2022-26017 Filed: 11/30/2022 8:45 am; Publication Date: 12/1/2022]